

Report title: Agreement of Concessionary Fare Scheme for 2019/20	
Report to: Councillor Ray Gooding, Cabinet Member for Education and Skills	
Report author: Andrew Cook Director for Highways and Transportation	
Date: 8 April 2019	For: Decision
Enquiries to: Richard Gravatt, IPTU Strategy, Growth, Infrastructure & Integration Manager.	
County Divisions affected: All Essex	

NOT FOR PUBLICATION

This report includes an appendix which is exempt from publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended in that it contains information about the financial affairs of the Council. There is a high degree of public interest in publishing information about public finances. However, the report should not be published because this public interest is outweighed by the public interest in not disclosing the County Council's negotiating position. The County Council is about to conduct a negotiation with bus operators and their representatives which would be prejudiced if the operators were to know the County Council's position.

1. Purpose of report

- 1.1 This report asks the Cabinet Member to authorise the publication of a final concessionary fares scheme for the financial year 2019/20 following discussions with Essex bus operators.

2. Recommendations

- 2.1. To publish a fixed pot concessionary fares reimbursement scheme with a value of £18.2m for 2019/20. This is within the Medium-Term Resource Strategy (MTRS) financial envelope for 2019/20.
- 2.2 That the Cabinet Member authorises the Director for Highways and Transportation to raise purchase orders for the two main providers of the Concessionary Fares service, First Essex Buses Ltd and Arriva.

3. Summary of issue

Background

- 3.1. The Concessionary Bus Travel Act 2007 requires each authority responsible for a concessionary travel scheme (known as a 'Travel Concession Authority' or TCA) to compensate operators who carry Concessionary Pass Holders with the broad aim of offering a level of reimbursement such that the operators are neither better or worse off than they would have been had the scheme not existed. The aim is not to subsidise bus operators, but to compensate them for the revenue they have foregone by not charging pass holders and to pay for any increased costs that they have incurred.
- 3.2. Essex County Council (the Council) is the TCA with responsibility for the English National Concessionary Travel Scheme for the administrative area of Essex.
- 3.3. The Department of Transport (DfT) have issued a 'Reimbursement Calculator' spreadsheet for working out each individual operator's level of reimbursement. Schemes employing the calculator (which is the DfT's recommended method) are referred to as 'Calculator Schemes'.
- 3.4. TCA's and operators have to agree a range of variable factors which can affect the level of reimbursement offered through a calculator. They are not obliged to accept the validity of each other's figures and can dispute them, based on their own evidence and assessments. However, if the dispute is not resolved, there will be appeals to the Secretary of State or a Judicial review.
- 3.5. Some potential costs are not covered by the formal calculator scheme. Operators are entitled to ask for compensation for the capital investment they have had to sustain to deal with the travel generated by the scheme – the argument being that they would have had a smaller less costly network if fewer passengers were travelling - including a market return on their investment. The level of such claims must be agreed by negotiation, or if no agreement is reached, by an appeal to the Secretary of State or a Judicial Review.
- 3.6. There is therefore a significant degree of uncertainty about the outcome of a calculator scheme. The County Council does not know how much the scheme will cost during the year. The operators will not know what revenue they will receive. This could lead to commercial service withdrawals.
- 3.7. An alternate method is for the TCA and the Operators to agree a voluntarily agreed 'Fixed Pot' scheme whereby a fixed amount is paid into the scheme pot by the TCA and allocated by an agreed method between the operators. This is the approach that has been agreed between the Council and the bus operators since the Council assumed responsibility for the scheme in 2011. This offers increased certainty with the TCA and operators both knowing what the overall outcome of the scheme will be. It also has a lower administrative burden. A fixed pot scheme cannot be unilaterally imposed on all operators by

the TCA due to the statutory guidance issued by DfT and subsequent case law.

- 3.8. The 2018/19 agreement (current scheme year) is a two-year scheme (covering the financial years 2017-2018 and 2018-2019) based on a 'fixed pot' of £18.1m each year. This scheme ends on 31 March 2019.
- 3.9. By law each TCA must issue a default scheme by 1st December of each year and then enter in to negotiations with bus operators over the outcome. Essex issued its default scheme, which is a calculator scheme on 1st December 2018. It then entered into negotiations with bus operators to see if agreement could be reached on continuing the fixed pot arrangement into 2019/20.
- 3.10. In the Cabinet decision FP/128/04/18 the Cabinet gave authorisation to officers to negotiate an agreement for reimbursing operators for the 2019/20 concessionary fares scheme and empowered the Cabinet Member for Education and Skills to agree a scheme within the parameters set out in the report and as set out in the confidential financial appendix.
- 3.11. Following a group negotiation on 18th December 2108 and subsequent individual discussions between the operators and ECC around the economic outlook, uncertainties inflation and potentially higher fares, ECC made a final offer of £18.2m to retain the fixed pot scheme for 2019/20. This is an increase of £100,000 on the 2018/19 fixed pot value. This is the maximum amount that ECC can justify paying under a voluntary arrangement allowing for the various factors involved, while respecting the no better and no worse off aim.
- 3.12. This offer has been accepted by the operators. This allows a new fixed pot scheme to be issued for 2019/20, to replace the default calculator scheme issued on 1st December 2018.

4. Options:

4.1. Option 1: Do nothing

- 4.1.1. The Council has a statutory duty to provide a concessionary bus pass scheme as outlined above. It cannot therefore avoid offering a scheme. If no formal decision is made the default calculator scheme would come into effect from 1st April 2019.

4.2. Option 2: Formally adopt a fixed pot scheme for 2019/20 with a value of £18.2m over the year.

- 4.2.1. That the Cabinet member formally issue a revised fixed pot scheme of £18.2m for the financial year 2019/20 giving the formal notice period to the operators of its introduction.

5.0 Policy context

- 5.1 Operating a Concessionary Fare Scheme is a statutory duty placed on the County Council by the Transport Acts 1985 and 2000 and the Concessionary Bus Travel Act 2007.
- 5.2 The Secretary of State has issued guidance on reimbursement schemes. Appeals are in general decided in accordance with the scheme. This guidance is important because an operator who disagrees with the Council's scheme can appeal to the Secretary of State and/or launch a Judicial Review challenging the Council's assumptions regarding the use of default values for the calculator.

6.0 Issues for consideration

6.1 Financial implications

- 6.1.1 The financial commitment of £18.2m is within the Medium-Term Resource Strategy (MTRS) financial envelope for 2019/20. Full consideration of the financial implications are set out in the attached Confidential Financial Appendix.

6.2 Legal Implications

- 6.2.1 The Council as the Travel Concession Authority is required to (and did) issue a proposed scheme by 1 December 2016. The proposed scheme can be amended – but only in a way which is more favourable to operators - no later than 1 April 2017, when the scheme takes effect. The operators can appeal to the Secretary of State no later than 27 May 2017, 56 days after the commencement date. In practice Operators will not, however, appeal if a scheme is agreed with them.
- 6.2.2 The Council is required by law to make arrangements which ensure that every operator:
 - a) is financially no better and no worse off as a result of providing a concession; and
 - b) receives appropriate reimbursement for providing concessions to the persons eligible.
- 6.2.3 Failure to negotiate means that the operators can appeal to the Secretary of State, who can then impose a scheme. This would result in significant legal costs being incurred and, if the operators were successful, would result in a scheme which is more expensive.
- 6.2.4 An agreed 'fixed pot', if it can be achieved, reduces the likelihood of any legal challenges. The legislation also allows for individual operator agreements and

hybrid schemes, allowing some operators to voluntarily take part in a fixed pot scheme while other work through the calculator process.

- 6.2.5 It should be noted that the Council cannot bind itself to a scheme for a fixed period of time. In particular, Regulation 10 of the Mandatory Travel Concession (England) Regulations 2011 requires the Council to review the basis of calculation of reimbursement at least every 12 months.

7.0 Equality and Diversity implications

- 7.1 In making this decision ECC must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act 2010, ie have due regard to the need to: A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. B. Advance equality of opportunity between people who share a protected characteristic and those who do not. C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.3 The PSED is a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149, is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 7.4 By providing the English National Concessionary Travel Scheme, the County Council meets its requirements under legislation to provide a concessionary travel scheme.
- 7.5 In addition to this, the County Council also provides discretionary elements to the scheme including extended start and finish times and companion passes for disabled people who require assistance with their journey due to their disability.
- 7.6 An equality impact assessment has been undertaken. No adverse impact has been identified on any protected group by the current scheme which is similar to that which has been in force since 2010. It is proposed to continue with a similar scheme for a further year.

8.0 List of appendices

- 8.1 Appendix 1 - Confidential appendix (not for publication)
- 8.2 Appendix 2 - Equality Impact Assessment

9.0 List of background papers

Cabinet decision FP/128/04/18

I approve the above recommendations set out above for the reasons set out in the report.	
Councillor Ray Gooding Cabinet Member for Education and Skills	Date 21/05/19

In consultation with:

Role	Date
Andrew Cook Director for Highways and Transportation	21/05/19
Executive Director for Corporate and Customer Services (S151 Officer) Nicole Wood, on behalf of Margaret Lee	26.04.19
Monitoring Officer Kim Cole, on behalf of Paul Turner	08.04.19